

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TERESA BEAL
Claimant

APPEAL NO. 11A-EUCU-00786-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING
Employer

**OC: 12/05/10
Claimant: Appellant (2)**

Section 96.5(3)a – Refusal of Work
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Teresa Beal, filed an appeal from a decision dated October 14, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 14, 2011. The claimant participated on her own behalf. The employer, Aventure Staffing, participated by Human Resources Representative Kayla Neuhalfen.

ISSUE:

The issue is whether the claimant refused an offer of suitable work and whether she is able and available for work.

FINDINGS OF FACT:

Teresa Beal began working for Aventure October `9, 2009. Her last assignment ended September 14, 2011. On September 28, 2011, Branch Manager Deb Upah contacted the claimant with a job offer to begin the next day at Monsanto for 40 to 60 hours per week at \$8.00 per hour and \$12.00 per hour overtime. The claimant understood the job to be only four days, Thursday through Sunday of that week.

Ms. Beal had already made arrangements to babysit her grandchildren and the mother would require at least a day's notice to find other child care, and she refused the job. In addition, she was suffering from an upper respiratory infection and did not feel it would be prudent to work in an environment with a lot of corn dust.

She was available to accept work the next week which she did.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant refused this one offer of work because of the short notice and a temporary medical problem which would have been aggravated by working in a dust-filled environment. Under the provisions of the above Administrative Code section, her availability for work was limited for two days of the work week but she was available the beginning of the week and for the next week as well. The work refusal was for good cause and disqualification may not be imposed.

DECISION:

The representative's decision of October 14, 2011, reference 01, is reversed. Teresa Beal is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css